MISCELLANY.

DANGEROUS PREMISES—VISITORS SUBJECTED TO DANGER OF ASSAULT.—In *Indianapolis St. Ry.* v. *Dawson* (68 N. E. 909), the Appellate Court of Indiana made a decision upon a somewhat novel state of facts, but which is abundantly supported by established principles, and is eminently just. It was held that where a street railway owning a park reached by its lines, and maintaining attractions for the public there, has knowledge that there is a conspiracy on the part of certain persons to assault any colored persons visiting the park, and knows of acts of violence committed pursuant to such design, but it transports colored persons there without warning them of the danger, and they are assaulted, pursuant to the conspiracy, the company's employees making no attempt to interfere, the railway company is liable for the injuries.

This case applies for the indemnity of persons invited into a public park or resort rules ordinarily binding upon common carriers, and such application would seem by analogy a fair one. One of the most recent common carrier cases is *Penny* v. *A. C. L. R. R.* in the Supreme Court of North Carolina (45 S. E. 563). Moreover, the settled principle as to the liability of an owner of dangerous premises is properly invoked. The Indiana court, in its opinion, remarks :

"When one expressly or by implication invites others to come upon his premises, whether for business or any other purpose, it is his duty to be reasonably sure that he is not inviting them into danger, and to that end he must exercise ordinary care and prudence to render the place reasonably safe for the visit (Cooley, Torts, 2d ed. 718 ; *Howe* v. *Ohmart,* 7 Ind. App., 33, 38, 33 N. E. 466 ; *Richmond* v. *Moore's Adm'r,* Va. 27 S. E. 70, 37 L. R. A. 258 ; *North Manchester* v. *Wilcox,* 4 Ind. App. 141, 30 N. E. 202 ; *Penso* v. *McCormick,* 125 Ind. 116, 25 N. E. 156, 9 L. R. A. 313, 21 Am. St. Rep. 211). No case has been cited or found where the premises upon which the injury complained of occurred, and to which the complainant came by invitation, were made unsafe through a conspiracy of the nature set up herein. Danger usually has been attributed to some defect in the premises themselves. But as a matter of principle it is quite as reprehensible to invite one knowing that an enemy is awaiting him with intent to asasult and beat him as it would be to invite him without having made the floor or the stairway secure. One attending an agricultural fair in response to a general invitation extended to the public has been awarded damages against the association where his horse was killed by target shooting upon a part of the ground allowed for such purpose (*Conradt* v. *Clauve,* 93 Ind. 476, 47 Am. Rep. 388). Judgments have also been sustained : When spectators rushed upon a race track, causing a collision between horses being driven thereon (*North Manchester Etc.* v. *Wilcox,* 4 Ind. App. 141, 30 N. E. 202). When an opening was left in a fence surrounding a race track, through which one of

the horses running went among the spectators (*Windeler* v. *Rush Co. Association*, 27 Ind. App. 92, 59 N. E. 209, 60 N. E. 954). Where horses were started on a race track in opposite directions at the same time, causing collision (*Fairmount* v. *Downey*, 146 Ind. 503, 45 N. E. 696). Where a horse with a vicious habit of track bolting was permitted to run in a race, such horse bolting the track, causing injury (*Lane* v. *Minn. St. Ag. Society*, Minn. 64 N. W., 382, 29 L. R. A. 708). Recognizing the rule of reasonable care to make the premises safe, a recovery was denied in the absence of any evidence of the immediate cause of a horse running through the crowds (*Hart* v. *Washington Park Club*, 157 Ill. 9, 41 N. E. 620, 29 L. R. A. 492, 48 Am. St. Rep. 298). Where a street car company maintained a park as a place of attraction for passengers over its line, and the falling of a pole used by one making a balloon ascension under a contract injured a bystander, recovery was allowed, the rule being announced that the company must use proper care to protect its patrons from danger while on its grounds (*Richmond Ry.* v. *Moore's Adm'r*, Va. 27 S. E. 70, 37 L. R. A. 258). Where a street car company maintained a large stage for exhibitions, in a pleasure resort owned by it, and made a written contract with a manager, by which the latter furnished various entertainments, among which was target shooting, one injured by a split bullet was allowed to recover, it being held that he might safely rely on those who provided the exhibition and invited his attendance to take due care to make the place safe from such injury as he received ; the question of due care being one for the jury (*Thompson* v. *Lowell*, 170 Mass. 577, 49 N. E. 913, 40 L. R. A. 345, 64 Am. St. Rep. 323 ; *Curtis* v. *Kiley*, 153 Mass. 123, 26 N. E. 421."

In *Thornton* v. *Maine State Agricultural Soc'y*, decided by the Supreme Judicial Court of Maine in December, 1902 (53 Atl. 979), it appeared that the defendant society was giving a fair and that it had let space upon its grounds for a shooting gallery. It was satisfactorily shown that a bullet fired by a patron of the shooting gallery while at target practice missed the target, passed through the fence inclosing the exhibition grounds and struck and killed the plaintiff's intestate, who was then standing upon a railroad platform outside of the grounds. It was shown that, although such platform was neither owned nor controlled by the defendant, it was one of the usual approaches to the defendant's grounds, and in the opinion of the court "there was sufficient evidence to justify the jury in finding that the deceased, at the time when and place where he was killed, was within the scope of the defendant's invitation to the public to attend the fair and, therefore, the defendant owed him the duty of using reasonable care for his safety."

Another principle governing the duty of a common carrier, but also, it would seem, applicable in cases of invitation to enter places of resort, is illustrated by *Fewings* v. *Mendenhall*, in the Supreme Court of Minnesota (93 N. W. 127), and *Holshauser* v. *D., G. & E. Co.*, in the Court of Appeals of Colorado (72 Pac. 289). In these cases the duty is recognized to warn both passengers and employees against danger to be incurred

from striking employees and their adherents, but if a person becomes a passenger or enters into employment upon a railroad car with full knowledge of the risk to be run, the company is not under the obligation of advising him thereof.—*N. Y. Law Journal.*

SHALL JUDGES WEAR GOWNS ?—Pennsylvania has raised the question as to whether our *nisi prius* judges should wear gowns and is endeavoring to create a sentiment in favor of such an innovation. The Dauphin County Bar Asosciation of that state has passed favorably on a motion to request the judges of that jurisdiction to consider the advisability of wearing gowns during the sessions of the court.

While we have not been able to ascertain the sentiment of the profession throughout the country, we have observed that the lawyers of Pennsylvania seem to have indorsed the suggestion above referred to quite heartily. One lawyer from that state writes as follows : "In my opinion this is a movement which it would be well for our county courts throughout the state to imitate. Surely it lends dignity and solemnity to the proceedings. I have seen a judge in a New Jersey court sit in a murder trial dressed in a buff sack suit, with a carnation in his button-hole ! And I have seen that same judge pronounce sentence of death upon a convicted murderer in very much the same clothes! I must say that in Pennsylvania it has generally been my experience that judges as a rule at least wear black suits, but surely gowns are still better." The *Philadelphia Press*, in referring to the action of the Dauphin County Bar Association, says: "The proposition is but another of the many evidences that legal minds are returning toward this ancient custom. To mention only a few others of the existing instances, the judges of the Philadelphia courts and of the supreme and superior courts of Pennsylvania have all adopted it and, as Dauphin county's courts are among the most important in point of business transacted throughout the state, it woud be well if there, too, this old form were favorably looked upon. There is no question but that it lends dignity to the bench and that to the lay mind at least a judge in sober gown of black is far more impressive than one in the light gray business suit, which is, unfortunately, a not infrequent spectacle in certain courts."

There are two extremes to be avoided in the adoption of ceremonials, either of language or dress. The one extreme is the insincerity, sham and ridiculous delays which often attend and result from a too devoted attachment to matters of mere form. Indeed, it was the tendency to *ultra* formalism that led the colonists of this country to repudiate many of the ancient customs of the English courts and of English practice. Sincerity, frankness and whole-souled familiarity between man and man, without the least taint of caste or class prejudice or superiority, were the great ideals of the early colonists and of the pioneers of our early civilization in the states farther West. The other extreme, however, is in carrying out the idea of simplicity and familiarity to an extent that

makes the serious transactions of life seem like mere mockery or ridiculous burlesque. Thus it has been charged that in some of the outlying districts in some of our far Western states it was not uncommon to see a judge on the bench in his shirt sleeves and with a cigar in his mouth while all of the proceedings were attended by the least possible formality. It did not seem particularly out of order in a court conducted in such fashion to see a judge jump down from the bench and engage in a fist fight with a lawyer who questioned his rulings.

Between these two extremes lies a happy mean, one which, while it satisfies the sense of dignity on the one hand, does not convey the idea of ridiculous insincerity or out-of-placeness, if the expression may be pardoned for the sake of clearness, on the other. A gown on a notorious political ward worker, for instance, would not lend him any dignity as a justice of the peace or even as a circuit or county judge ; on the contrary, the costume would seem to those who knew him, as absurd as fitting out the devil in the habiliments of an angel. The best way to dignify the bench and raise it higher in the esteem and confidence of the people is to put in as judges men of personal dignity and high intellectual, judicial and moral attainments. Without men of this character on the bench, all the silk in the world made up into gowns, or all the hair in the world made up into wigs, would not serve to add a particle of dignity to the office which such men have been elected or appointed to fill.

Personally, we are opposed to all matters of mere formalism. We have no objections to gowns, however, on federal or appellate judges, or wherever the *personnel* of the bench itself appropriately harmonizes with such attire. In such cases it is undoubtedly true that the assumption of the judicial gown would, at least, in the language of the Harrisburg *Patriot*, "give the appearance of greater dignity to a tribunal which, having the power to deprive men of their liberty and of their lives for offenses against society, should have the appearance as well as the substance of awe-inspiring authority and majesty." — *Central Law Journal.*